



Control Number: 49737



Item Number: 95

Addendum StartPage: 0

**PUC DOCKET NO. 49737**  
**SOAH DOCKET NO. 473-19-6862**

RECEIVED  
2019 SEP 16 PM 3:56  
PUBLIC UTILITY COMMISSION  
FILING CLERK

<b>APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR CERTIFICATE OF CONVENIENCE AND NECESSITY AUTHORIZATION AND RELATED RELIEF FOR THE ACQUISITION OF WIND GENERATION FACILITIES</b>	§ § § § § § §	<b>BEFORE THE  STATE OFFICE OF  ADMINISTRATIVE HEARINGS</b>
---	---------------------------------	---

**SWEPCO'S PROPOSED PROCEDURAL SCHEDULE**

**I. Introduction and Overview**

Following up on the discussion at the September 12, 2019 prehearing conference, Southwestern Electric Power Company (SWEPCO) proposes the procedural schedule attached as Attachment A. A Word copy of this schedule will be provided to the ALJs' assistant. The key dates in the proposed schedule are shown in the following table and certain scheduling issues are discussed further below.

**Key Dates**

EVENT	DEADLINE
Case Filed	July 15, 2019
Intervenor Direct Testimony	December 18, 2019 (156)
Staff Direct Testimony	January 13, 2020 (26)
Rebuttal and Cross-Rebuttal Testimony	January 27, 2020 (14)
Hearing on the Merits	February 10-14, 2020 (14)
Statutory Deadline	July 15, 2020 (152)

(Days from previous event shown in parentheses.)

This proposed schedule allows a little more than 5 months from the case filing date for intervenors to file their testimony, followed by a longer-than-usual 26 days for staff testimony (in recognition of the intervening holidays), 14 days for SWEPCO's rebuttal and intervenor/staff cross-rebuttal, and 14 days until the hearing. The hearing ends 7 months after the filing date,

leaving 5 months for initial and reply briefs, the proposal for decision (PFD), exceptions and replies, two Commission open meetings, and an order.

## **II. Key Issue – Meeting the Statutory Deadline**

As discussed at the prehearing, SWEPCO believes the key issue is establishing a schedule that will provide a PFD to the Commission in time for it to meet the July 15, 2020 statutory deadline.<sup>1</sup> In recognition that the ALJs' availability is limited prior to February 10, 2019, SWEPCO proposes that the hearing begin on that date, although even with that date the remaining schedule to meet the statutory deadline will be tight. A hearing beginning after that date will not be reasonably calculated to meet the statutory deadline. This is illustrated in the following table comparing SWEPCO's proposed schedule, intervenor/staff's proposed schedule, and the actual schedule in a previous SWEPCO wind generation CCN case, Docket No. 47461 (the table shows the approximate number of days from the previous entry in parentheses):

	<b><u>SWEPCO</u></b>	<b><u>Intervenors</u></b>	<b><u>Dkt. 47461</u></b>
Case Filed	July 15, 2019	July 15, 2019	July 31, 2017
<b>Hearing</b>	<b>Feb. 10-14(210)</b>	<b>Feb. 24-28 (224)</b>	<b>Feb. 13-22 (197)</b>
Initial Briefs	Feb. 28 (14)	March 13 (14)	March 12 (18)
Reply Briefs	Mar. 13 (14)	March 28 (14)	March 21 (9)
PFD	May 13 (60)	May 28 (60)	May 18 (58)
Exceptions	May 28 (14)	June 11 (14)	June 12 (25)
Replies	June 11 (14)	June 25 (14)	June 25 (13)
First open meeting	June 18 (7) <sup>1</sup>	July 2 (7) <sup>1,2</sup>	July 12 (17)
Second open meeting	First half of July <sup>2</sup>	Second half of July <sup>2</sup>	July 26 (14)
Order			Aug. 13 (18)
<b>Statutory Deadline</b>	<b>July 15</b>	<b>July 15</b>	<b>July 31 (-13)</b>

<sup>1</sup> Earliest possible open meeting date. Open meeting schedule for next summer not yet established. Replies must be filed a week in advance of the open meeting. 16 TAC § 22.71(i).

<sup>2</sup> Last July (2019) the Commission only had one open meeting, on July 18.

---

<sup>1</sup> PURA § 37.058(d).

The following table summarizes the pre- and post-hearing timing for SWEPCO's proposed schedule, intervenor/staff's proposed schedule, and the actual schedule from the previous SWEPCO wind CCN case:

**Pre- and Post-Hearing Timing**

	<b><u>SWEPCO</u></b>	<b><u>Intervenors</u></b>	<b><u>Dkt. 47461</u></b>
Filing to hearing	7 months	7 ½ months	6 ½ months
Hearing to statutory deadline/order	5 months	4 ½ months	6 months

From these two tables, it is apparent that Docket No. 47461 was on an earlier hearing schedule than either SWEPCO's or intervenor/staff's proposed schedule (196 days from filing as opposed to 210 for SWEPCO's proposed schedule or 224 days for intervenors/staff's proposed schedule) but still didn't make the one-year statutory deadline for CCN cases. Moreover, the agreed schedule for that docket (joined by many of the same parties in this case) scheduled the hearing several weeks *earlier* than it actually occurred, but the hearing was delayed by SWEPCO's modification of its testimony to address the impact of the federal income tax reform legislation enacted shortly before the hearing. *See* Attachment B. The actual Docket No. 47461 schedule in the first table also shows the SWEPCO and intervenor/staff assumed post-hearing schedules are likely to slip. This is particularly true if there is only one open meeting next July like there was this year.

To make their proposed post-hearing schedule appear more workable, intervenors/staff may propose to restrict the time for initial and reply briefs, exceptions and replies. SWEPCO's proposed schedule assumes 14 days for each and significantly reducing that time would be unreasonable for several reasons. First, the ALJs need good briefs and the Commissioners need good exceptions and replies to assist them with reviewing and analyzing the case. Restricting the briefing time does not serve the interest of quality decision-making. Second, while SWEPCO

sympathizes with intervenors' and staff's workload (SWEPCO's witnesses have approval cases for the wind facilities pending simultaneously in four jurisdictions), over-extending the front end of this case and compressing the briefing at the back end will not relieve that workload. Instead, the parties will simply face compressed briefing schedules while still likely having heavy workloads elsewhere. Finally, this is not an accelerated case. There is a full year to resolve it and the parties have a significant amount of time to conduct discovery and prepare testimony under SWEPCO's proposed schedule. It is simply unreasonable to extend the front end of the case for so long that the briefing quality suffers at the back end and the statutory deadline is unlikely to be met.

It would also be unreasonable for the parties to propose to constrict the period for SWEPCO to prepare its rebuttal testimony. SWEPCO's rebuttal witnesses need to be able to respond to multiple parties on complex issues during a period when they are also participating in rebuttal testimony or hearings in several other jurisdictions. Intervenors will have over five months to prepare and file testimony and staff will have several weeks more, so SWEPCO's witnesses should have at least two weeks after staff's testimony to prepare their rebuttal. Unreasonably restricting the Company's rebuttal testimony period is not a valid way to extend the already-lengthy time for intervenor and staff testimony.

One other possible intervenor/staff proposal that the ALJs should reject would be to reduce the 20-day period in the Commission's rule for the Company to respond to RFIs concerning its direct case. No good cause exists to shorten the response time, as required by 16 TAC § 22.144(c)(1). Under SWEPCO's proposed schedule, intervenors and staff will have almost five months to serve discovery concerning the Company's direct case, enough time to serve seven back-to-back sets of RFIs with a 20-day turnaround. In the two months since the case has been filed,

they have collectively served six sets of RFIs on SWEPCO (three from TIEC and one each from Staff, CARD and NTEC/ETEC), suggesting that there is no urgency to conduct extensive discovery. As noted previously, the Company's witnesses are simultaneously participating in cases in four jurisdictions. This is not an accelerated case and instead has a longer one-year deadline for decision. Rather than being the kind of accelerated case where a faster discovery turnaround on the applicant's filing could be justified, there is no good cause in this case to depart from the standard 20-day turnaround established by the Commission's rules.

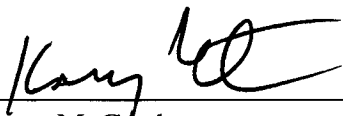
Finally, intervenors/staff referred at the prehearing to the procedural schedule in a Southwestern Public Service Company wind generation CCN case, Docket No. 46936. However, in that case the agreed procedural schedule would not have completed the hearing until almost eight months after the case was filed, leaving little more than four months to complete initial and reply briefs, a PFD, exceptions and replies, two open meetings, and entry of a final order. As a result, there would have been virtually no chance of completing that case within a year if it had not settled.

For the foregoing reasons, SWEPCO requests that its proposed procedural schedule be adopted.

Respectfully submitted,


Rhonda C. Ryan  
State Bar No. 17478800  
rcryan@aep.com  
**American Electric Power Service Corporation**  
400 West 15<sup>th</sup> Street, Suite 1520  
Austin, Texas 78701  
Telephone: (512) 481-3321  
Facsimile: (512) 481-4591

William Coe  
State Bar No. 00790477  
wcoe@dwmrlaw.com  
Kerry McGrath  
State Bar No. 13652200  
kmcgrath@dwmrlaw.com  
**Duggins Wren Mann & Romero, LLP**  
600 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 744-9300  
Facsimile: (512) 744-9399

By:   
Kerry McGrath

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was served on all parties of record by electronic mail, facsimile, hand-delivery, overnight delivery, or First Class U.S. Mail on this 16<sup>th</sup> day of September, 2019.

  
Kerry McGrath

## ATTACHMENT A

### SWEPCO'S PROPOSED PROCEDURAL SCHEDULE

<b>EVENT</b>	<b>DEADLINE</b>
Intervention Deadline	September 30, 2019
Proof of Notice	October 15, 2019
Objections to SWEPCO's Direct Testimony	December 10, 2019
Deadline for serving written discovery on SWEPCO's Direct Testimony	December 10, 2019
<b>Intervenor Direct Testimony</b>	<b>December 18, 2019</b>
Responses to objections to SWEPCO's Direct	December 20, 2019
Hiatus on Discovery for Intervening Holidays: Discovery will not be served on any party and the days will not be counted for any discovery related deadlines	December 20, 2019 – January 3, 2020
Settlement Conference	January 6, 2020
Objections to Intervenor Direct Testimony	January 6, 2020
Responses to objections to Intervenor Direct	January 13, 2020
<b>Staff Direct Testimony</b>	<b>January 13, 2020</b>
Deadline for serving written discovery on Intervenor and Staff Direct Testimony	January 17, 2019
Objections to Staff Direct Testimony	January 20, 2020
Responses to objections to Staff Direct	January 27, 2020
<b>SWEPCO's Rebuttal and Staff and Intervenor Cross-Rebuttal Testimony</b>	<b>January 27, 2020</b>
Deadline for serving written discovery on SWEPCO rebuttal and Staff and Intervenor Cross-Rebuttal Testimony	January 31, 2020
Objections to SWEPCO's Rebuttal and Staff and Intervenor Cross-Rebuttal Testimony	January 31, 2020
Responses to objections to SWEPCO's Rebuttal and Staff and Intervenor Cross-Rebuttal; Deadline for depositions	February 5, 2020
<b>Hearing on the Merits</b>	<b>February 10-14, 2020</b>

#### Additional Requirements:

In addition to the above, the ALJs order that:

- (i) drafts of testimony are not discoverable;
- (ii) email service is a valid method of service;
- (iii) any party serving electronically must include the Commission docket number and a description of the document in the subject line of the transmitting email;



## **ATTACHMENT A**

- (iv) workpapers are due one (1) working day after the testimony is filed. Workpapers may be provided to the parties on CDs or USB flash drives, but hard copies will be provided to the ALJs;
- (v) for written discovery on Staff and Intervenor direct testimony
  - a. responses are due within 10 calendar days of the discovery request;
  - b. objections are due within 3 calendar days of the discovery request;
  - c. motions to compel are due within 3 calendar days of an objection; and
  - d. responses to motions to compel are due within 3 calendar days of the motion to compel;
- (vi) for written discovery on SWEPCO's rebuttal and Staff and Intervenor cross-rebuttal testimony
  - a. responses are due within four working days of the discovery request;
  - b. objections are due within two working days of the discovery request;
  - c. motions to compel are due within 2 working days of the objection; and
  - d. responses to motions to compel are due within 2 working days of the motion to compel.

ATTACHMENT B

SOAH DOCKET NO. 473-17-5481  
PUC DOCKET NO. 47461

RECEIVED  
2017 AUG 18 AM 10:36

APPLICATION OF SOUTHWESTERN §  
ELECTRIC POWER COMPANY FOR §  
CERTIFICATE OF CONVENIENCE AND §  
NECESSITY AUTHORIZATION AND §  
RELATED RELIEF FOR THE WIND §  
CATCHER ENERGY CONNECTION §  
PROJECT IN OKLAHOMA §

BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 2  
ESTABLISHING PROCEDURAL SCHEDULE, CANCELING PREHEARING  
CONFERENCE, NOTICE OF HEARING ON THE MERITS, AND GRANTING  
MOTIONS TO INTERVENE

The parties have been able to agree to a procedural schedule, including a date for the hearing on the merits. Therefore, the prehearing conference set for August 18, 2017, is canceled. The following procedural schedule is adopted:

EVENT	DEADLINE
Intervention deadline	October 20, 2017
Deadline for serving written discovery on SWEPCO direct testimony	December 4, 2017
Intervenor direct testimony	December 4, 2017
Staff direct testimony	December 11, 2017
Rebuttal and cross-rebuttal testimony	January 4, 2018
Deadline for serving written discovery on Intervenor and Staff direct, SWEPCO rebuttal, and Staff and Intervenor cross-rebuttal testimonies	January 10, 2018
Hearing on the merits	January 16-26, 2018


The hearing on the merits will convene at 9:00 a.m., January 16, 2018, at the State Office of Administrative Hearings, 300 West 15th Street, 4th Floor, Austin, Texas. It is scheduled to end on January 26, 2018. If the parties believe that more or less time is needed, they shall inform the ALJs immediately.

15

The parties also agree to a 15 calendar day turnaround for written discovery on SWEPCO direct testimony; a 4 working day turnaround for written discovery on Intervenor and Staff direct, SWEPCO rebuttal and Intervenor and Staff cross-rebuttal testimonies. They have also agreed to a discovery hiatus from December 25, 2017, to January 1, 2018.

The Motions to Intervene filed by TIEC and OPUC are granted.

**SIGNED August 18, 2017.**

  
WENDY K.L. HARVEL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS